Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD E. ARMSTRONG, POST-BANKRUPTCY PETITION AND AS A BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST, *Petitioner*

v.

ROGER G. SEGAL, AS TRUSTEE OF THE MOUNTAIN PACIFIC VENTURES, INC. et al., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

DONALD E. ARMSTRONG, PRO SE
INDIVIDUALLY, POST-BANKRUPTCY PETITION AND AS BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Donald E. Armstrong, individually and post-bankruptcy-petition and as a beneficiary of the Donald E. Armstrong Family Trust ("Family Trust") and the Donald E. Armstrong Charitable Remainder Unitrust ("Charitable Trust") (collectively the "Trusts") ("Armstrong") respectfully petitions for a writ of certiorari to review one decision of the Tenth Circuit Court of Appeals.

QUESTIONS PRESENTED

1. Can a permanent injunction be moot preventing appellate review and be an unconstitutional denial of a party's access to the courts?

2. Can a bankruptcy court enjoin non-parties to a settlement—especially that have not been noticed of the bankruptcy proceedings and where the estate was fully liquidated?

3. Are interlocutory orders in dismissed cases based on F.R.C.P. 41(a) entitled to preclusive effect?

4. Can penalties of over $2.8M in relation to zero actual damages against non-debtors provide standing to an alleged creditor and are these penalties unconstitutionally excessive? Can any exemplary damages be awarded without an award of actual damages?

5. Can a bankruptcy plan of reorganization be approved based on paying all unsecured creditors when one unsecured creditor has not been paid and that creditor was denied the right to a hearing?

PARTIES TO THE PROCEEDINGS

Roger G. Segal as Trustee of the Chapter 11 Bankruptcy Estate of Mountain Pacific Ventures, Inc.

Kenneth A. Rushton as Trustee of the Chapter 11 Bankruptcy Estate of Donald E. Armstrong

Steppes Apartments, Ltd.

John L. and Rosalie Feece

Donald E. Armstrong as Trustee of the Donald E. Armstrong Family Trust and Donald E. Armstrong Charitable Remainder Unitrust

Donald E. Armstrong, Post Bankruptcy Petition And As Beneficiary of the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust

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OPINIONS

The Tenth Circuit Court of Appeals decision affirming the dismissal entered on May 27, 2004 in 03-4005. (not reported) (Order is reproduced as App. A. All future reproduced documents shall be referred to as "App. Letter".) The Utah District Court order dismissing Case 2:02CV00567 entered on December 12, 2002. (App. B) The Utah Bankruptcy Court order approving the Plan of Reorganization entered on May 3, 2002. (App. C)

JURISDICTION

The date on which the United States Court of Appeals decided my case in 03-4005 was May 27, 2004. No petition for rehearing was filed in the case. An extension of time to file the petition for a writ of certiorari was granted to and including October 9, 2004 on August 23, 2004 in Application No. 04A159.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The First Constitutional Amendment provides in relevant part: "Congress shall make no law .....to petition the Government for a redress of grievances." *U.S.C.A. Const. Amend. I* (App. D § 1)

The Fifth Constitutional Amendment provides in relevant part: "No person shall be ..... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." *U.S.C.A. Const. Amend. V* (App. D § 2)

The Eighth Constitutional Amendment provides in relevant part: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *U.S.C.A. Const. Amend. VIII* (App. D § 3)

The Fourteenth Constitutional Amendment

provides in relevant part: "No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *U.S.C.A. Const. Amend. XIV* (App. D § 4)

STATEMENT

This case is essentially about the Utah federal courts denying Armstrong and/or the Trusts the right to be heard. Most, or all, of these issues are grounded in this concept. The Mountain Pacific Ventures, Inc. ("MPV") Plan of Reorganization ("Plan") is directed at enjoining Armstrong and the Trusts' rights to be heard. There was no need for the MPV Plan since Segal had the funds to pay all valid unsecured creditors in full early in the case. Instead, Segal delayed payment of the unsecured creditors and spent hundreds of thousands of dollars in legal fees to obtain approval of the Plan creating risk to the valid unsecured creditors. This is not consistent with a bankruptcy trustee's duties to the estate, creditors and the debtor. 11 U.S.C. §§ 704 and § 1106 (App. D §§ 5 and 6)

This Court has consistently upheld the basic due process issues of jurisdiction, notice and a full and fair opportunity to be heard before an unbiased and impartial tribunal. *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950) ("*Mullane*"); and *Hansberry v. Lee,* 311 U.S. 32, 40 (1940) ("*Lee*"); *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 568, (1996) ("*BMW*"); *State Farm Mut. Auto. Ins. Co. v. Campbell,* 123 S.Ct. 1513, (U.S.,2003) ("*State Farm*"); *United States v. Bajakajian,* 524 U.S. 321 (1998) ("*Bajakajian*"); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424 (2001) ("*Cooper*"); *Apache Corp. v. Moore,* 517 U.S. 1217 (1996) ("Apache"); *Armstrong v. Manzo,* 380 U.S. 545 (1965) ("*Manzo*"); *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80 (1988) ("*Peralta*").

The Utah Bankruptcy Court and the Tenth Circuit Court of Appeals entered and affirmed a litigation injunction ("Injunction") against Armstrong that completely denies Armstrong the constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* This injunction prevents Armstrong and numerous other parties from filing any pleadings relating to numerous individuals, most of which have absolutely no relationship to the MPV Bankruptcy. Under the facts of these cases, Armstrong is completely denied access to the courts. The Tenth Circuit held that Armstrong's appeal of the MPV Confirmation Order ("Confirmation") was moot because the MPV Bankruptcy Estate was fully resolved. However, the litigation injunction is a permanent injunction affecting Armstrong and others forever.

The Confirmation and the Injunction affect numerous parties that had no standing, that were not noticed and where the Bankruptcy Court had no jurisdiction. The various circuit courts have entered differing rulings on the issue of exactly who a bankruptcy court can enjoin and/or who they can release. It is time for this Court to resolve the question of what authority and jurisdiction a bankruptcy court has in relation to injunctions and especially permanent injunctions.

Various courts have upheld injunctions in bankruptcy cases to protect ongoing entities in chapter 11 reorganizations. *In re Dow Corning Corp.*, 280 F.3d 648, (C.A.6 2002) ("*Corning 1*") (petition denied at 537 U.S. 816, 2002) There are split decisions among the circuits on permanent injunctions in bankruptcy estates.

Steppes Apartments, Ltd. ("Steppes") plays a major role in this horror. Steppes obtained a Modified Judgment in excess of $2.8M in Texas usury forfeitures and penalties in relation to zero actual damages against the Trusts on May 8, 1997. (App. E) The Modified Judgment specifically excludes liability against Armstrong. Steppes

filed an action in Utah in 1997 claiming fraudulent transfers and filed lis pendens on 10 Utah properties. Steppes' filed a proof of claim in the MPV Bankruptcy based on the Modified Judgment and alleged fraudulent transfers. Only one of the affected properties was ever owned by the Trusts and this one property was not owned by MPV. Judge Clark ruled that Steppes' lis pendens were wrongful liens on September 7, 2001. (App. F) Armstrong and the MPV Trustee, Roger Segal ("Segal") argued the the penalties in the Modified Judgment are unconstitutionally excessive, not entitled to full faith and credit in Utah and that no penalties could be awarded without an award for actual damages. Steppes had no standing in the MPV Bankruptcy since the penalties were unconstitutionally excessive.

Steppes, Segal and the Bankruptcy Court relied on interlocutory orders in cases Steppes dismissed with prejudice based on F.R.C.P. 41(a). In Steppes' Memorandum in Support of Motion to Clarify and/or Reconsider Order Modifying Plan of Reorganization, Background ¶5, Steppes states: "Subsequent to the entry of the Litigation Injunction, the parties took action to substantially consummate the Plan of Reorganization, including the disbursement of money and the dismissal of several lawsuits *with prejudice*." The Bankruptcy Court gave preclusive effect to these interlocutory orders. Res judicata requires final and appealable orders. Courts are now eroding that concept to give effect to interlocutory orders that were not appealable denying a party the right to appellate review.

Segal's plan of reorganization was based on paying all unsecured creditors in full so that the unsecured class could not vote on the plan. Armstrong acquired several claims post-bankruptcy petition. One of those claims was not paid at all and Armstrong was denied the right to a hearing. The Bankruptcy Court held that Segal's objection

to Armstrong's claim did not provide Armstrong with the statutory 30 days and yet Segal did not pay Armstrong's claim.

BACKGROUND

All this litigation stems from a case originating in Texas. Steppes purchased the Steppes Apartments from the Trusts on September 29, 1994 executing notes and deeds of trust in favor of the Trusts for 90% of the purchase price along with a personal guaranty from John L. Feece ("Feece") in favor of the Trusts. (App. E)

The Modified Judgment was entered on May 8, 1997 that specifically excludes liability against Armstrong, individually. The Modified Judgment contains zero actual damages, but awards over $2.8M in exemplary damages. Steppes filed an action in Utah Federal District Court as Case No. 2:97-CV-0663ST (the "Fraudulent Transfer Action") against the Family Trust Armstrong, individually, and MPV asserting the same claims Steppes and Feece litigated and/or could have litigated in Texas. This is the very first time that Armstrong, individually, or MPV were ever named.

Steppes filed lis pendens' on all property Armstrong, or any entity Armstrong had any interest in including MPV, with the specific provision that the lis pendens' also affected any property Armstrong, the Family Trust or MPV could acquire in the future. These lis pendens caused Willow Brook Cottages, L.L.C., MPV and Armstrong, individually, to declare bankruptcy. MPV filed for protection under Chapter 11 in Case 99-22588 ("22588"). Armstrong filed for protection under Chapter 11 of the Bankruptcy Code on March 10, 2000 in what became Utah Bankruptcy Case 00-26592 ("26592").

Steppes filed a proof of claim in 22588 based on the Fraudulent Transfer Action. MPV filed an adversary proceeding against Steppes as an objection to Steppes'

claim and for affirmative relief for Steppes' filing of wrongful liens.

On September 7, 2001, the Honorable Glen E. Clark ruled that Steppes May 6, 1998 lis pendens' were wrongful liens under the Utah Wrongful Lien Act. (App. F and G) Despite Judge Clark's September 7, 2001 Order, Steppes and Feece still refused to release their May 6, 1998 wrongful liens and Armstrong still cannot obtain a hearing on Armstrong's post-bankruptcy-petition property rights.

Steppes' May 6, 1998 wrongful liens affected MPV and Armstrong post-bankruptcy-petition and as a Beneficiary of the Trusts, outside of the Armstrong Bankruptcy Estate, and deny Armstrong, in all capacities, his Fifth and Fourteenth Amendment property rights. *U.S.C.A. Const. Amend. V and XIV* (App. D §§ 2 & 4)

The Beneficiaries of the Trusts, including Armstrong as a Beneficiary, have never been provided notice of any kind or given any opportunity to defend themselves as to any of these claims and actions by Steppes. *Mullane*, *Manzo* and *Peralta* Numerous Utah federal judges, Utah and California bankruptcy judges, the Tenth Circuit Court of Appeals and Utah State Court judges refuse to provide Armstrong the right to discovery, due process or any hearing on the merits. These issues have never been addressed on the merits and there is no final judgment on these issues. Most of these issues warrant a *de novo* review which has never occurred.

Armstrong has lost his reputation, business, financial stability, assets, home, credit rating, career, freedom, right to own property and many other constitutionally protected rights as a result of the various courts denying Armstrong his right to a hearing.

Segal proposed a plan of reorganization that liquidated all of MPV's assets. There was no ongoing business. Segal's plan contained the Injunction that is permanent and ongoing. There is no purpose to a permanent injunction since MPV was fully liquidated. The Tenth Circuit held that Armstrong's appeal was moot because the plan was fully consummated illustrating that there is no purpose or need for the ongoing Injunction. It cannot be that the case is moot because the estate is fully consummated and that there is any purpose to a permanent injunction. The purpose of broad reaching injunctions is to facilitate the reorganization of a debtor. With no ongoing reorganized debtor there is no basis, statute, authority or jurisdiction to maintain a permanent injunction.

REASONS FOR GRANTING THE PETITION

This Court has continually protected the constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* The Tenth Circuit refused to consider Armstrong's appeal claiming it was moot since the MPV plan was allegedly fully consummated. The MPV plan contains the Injunction affecting Armstrong and others permanently. Bankruptcy courts have limited jurisdiction. There are numerous decisions in the circuit courts addressing the limits of bankruptcy court jurisdiction to impose sanctions on non-parties and protecting non-parties. The most a court has approved are injunctions to protect the reorganization of an ongoing enterprise. *Corning 1* In the Corning cases there was an ongoing enterprise and ongoing claims that were affected. The court held that injunctions may be appropriate to protect reorganizations under certain situations. In the present case there is no ongoing enterprise and no purpose for permanent injunctions. It is important for this Court to explain the exact limits of bankruptcy court jurisdiction, whether permanent

injunctions are moot and cannot be appealed and whether bankruptcy courts can enjoin anyone to protect persons or entities that are liquidated. The Tenth Circuit held that § 105(a) does not override § 524(e) and that bankruptcy courts can't release non-debtors. *In re Western Real Estate Fund Inc.*, 922 F.2d 592, 601 (10th Cir. 1990) ("*Western*")

There is an unanswered question relating to the preclusive affect of interlocutory orders in cases that are dismissed according to F.R.C.P. 41(a)(1). The Tenth Circuit and other courts continually rely on interlocutory orders in the Fraudulent Transfer case that Steppes voluntarily dismissed based on F.R.C.P. 41(a)(1). (App. D § 7) Steppes also dismissed other cases based on the same claims implicating the dismissal with prejudice portion of F.R.C.P. 41(a)(1). Several courts are now giving preclusive effect to interlocutory orders that are not final and appealable. It is important for the Court to finally resolve this question especially in relation to dismissals based on F.R.C.P. 41(a)(1).

This Court has delivered several opinions relating to the unconstitutionality of excessive punitive damage and penal judgments in recent years. *BMW, State Farm, Bajakajian* and *Cooper* This Court has not specifically addressed these principles in relation to statutory civil penalties. It is necessary for this Court to confirm that the principles laid out in these cases apply to all penalties of all kinds and not just punitive damages. There are references in *BMW* and *State Farm* that these principles apply to all penalties awarded by states but there have been no cases with these facts.

This Court has continually applied the *BMW* guideposts that include a ratio evaluation of penalties to actual damages or harm caused. In Texas, there is a statute that provides that no exemplary damages can be awarded without an award of actual damages. Tex. Civ.

Prac. & Rem. Code § 41.004(a) (App. D § 8) The Texas courts refused to honor their own statute. It would save a great deal of litigation for this Court to state that there can, or cannot, be exemplary damages without an award of compensatory or actual damages. This entire mass of litigation would have been avoided since Steppes was never awarded any actual damages and, in fact, Steppes did not claim any actual damages in Texas. It is critical that this Court confirm that there can be no statutory penalties, civil penalties or punitive damages without an award of actual damages. The Court could address this issue at the petition level by simply applying *BMW*, *State Farm, Cooper* and *Bajakajian* to civil and statutory penalties and confirming that there can be no exemplary damages without an award of actual damages.

The Bankruptcy Code provides that a class of claims may vote on a plan of reorganization unless all of the class has been paid. Armstrong owned a claim that had not been determined to be denied and where Segal never held a valid hearing to determine the validity of Armstrong's claim. The Bankruptcy Court approved the plan of reorganization based on paying all unsecured creditors when all unsecured creditors were not paid. It is critical that this Court address this issue and vacate the MPV plan of reorganization.

ISSUES PRESENTED

1. **Can A Permanent Injunction Be Moot Preventing Appellate Review And Be An Unconstitutional Denial Of A Party's Access To The Courts?**

The MPV Plan contains the Injunction that prevents Armstrong and other parties from pursuing actions against the MPV estate, Segal and numerous other parties including Steppes. The Tenth Circuit held that the MPV plan was consummated and that

Armstrong's appeal was therefore moot preventing review of Armstrong's appeal.

The Injunction is permanent having prospective effect. Segal and Steppes continue to benefit by the Injunction and yet the Tenth Circuit refuses to consider the merits of Armstrong's appeal. This Court has defined the concept of mootness in relation to civil cases[1].

Clearly, relief can be provided here in removing or modifying the Injunction. Armstrong's appeal is not moot. What really occurred here is that the courts used the issue of mootness to deny Armstrong the constitutional right to be heard. The same injunctions were entered in 22588 and 26592. On September 3, 2004, Judge Cornish modified the injunction entered in 26592 continuing its enforcement and adding additional limitations. (App. H)

Bankruptcy courts are courts of limited jurisdiction. "The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995) The principal test for bankruptcy jurisdiction is whether the action can have an effect on the bankruptcy estate. *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir.1984) Bankruptcy courts and/or parties cannot create their own jurisdiction. *Matter of FedPak Systems, Inc.*, 80 F.3d 207, 215 (C.A.7 1996);

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[1] [A] case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979) (quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)). The underlying concern is that, when the challenged conduct ceases such that " 'there is no reasonable expectation that the wrong will be repeated,' *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653, 16 S.Ct. 132, 40 L.Ed. 293 (1895))

In re AAPC, Inc., 277 B.R. 785, (Bankr.D.Utah 2002) (App. C) However, in MPV, Judge Clark entered an order that specifically affected the Trusts and the Beneficiaries without notice and a full and fair opportunity to be heard. Judge Clark exceeded his jurisdiction in order to enjoin Armstrong, the Trusts and others. It is critical that this Court grant this petition to address the limits of bankruptcy court jurisdiction especially in relation to parties that were never noticed.

The Injunction protects numerous parties that did not contribute to the MPV estate or have anything to do with the MPV estate. The Tenth Circuit held that the MPV Plan was consummated. Clearly, no litigation between Armstrong, the Trusts or the Beneficiaries against Steppes, Feece or the other protected parties will have any effect on the MPV estate. All unsecured creditors (except Armstrong) were paid in full. The only possible affect is the complications that Segal and the Bankruptcy Court created without jurisdiction or legal authority. *In re Lacy*, 183 B.R. 890, 895, (Bankr.D.Colo. 1995) (citing *Matter of Holly's, Inc.*, 172 B.R. 545 (Bankr.W.D.Mich. 1994)) and *Western* It is critical that this Court address who bankruptcy courts have jurisdiction over to protect or enjoin.

This issue is simple, if the Injunction continues in effect Armstrong's appeal is not moot. If Armstrong's appeal is moot there can be no continuing effect of the Injunction. It is critical that this Court define mootness in relation to permanent injunctions and bankruptcy courts. Absent consideration and reversal by this Court, lower courts will use the Tenth Circuit decision as a means of denying other parties' right to be heard on permanent injunctions by claiming the issues are moot while allowing the permanent injunction to remain effective.

Armstrong is entitled to appellate review especially of the Injunction. The issue of bankruptcy court jurisdiction and authority to enjoin parties is ripe for this Court's consideration and determination. Certainly a permanent injunction is never moot. Neither 11 U.S.C. §§ 105 nor 524(e) (C §§ 9 and 10) allow for enjoining debtors and releasing non-debtors, non-creditors and non-parties.

2. CAN A BANKRUPTCY COURT ENJOIN NON-PARTIES TO A SETTLEMENT—ESPECIALLY THAT HAVE NOT BEEN NOTICED OF THE BANKRUPTCY PROCEEDINGS AND WHERE THE ESTATE WAS FULLY LIQUIDATED?

The Settlement is between Steppes, Segal and Rushton yet it affects Armstrong, the Trusts and the Beneficiaries. Armstrong, the Trusts and the Beneficiaries never participated in the Settlement nor agreed to it. Steppes, Segal and Rushton essentially entered into a unilateral agreement specifically to address the rights of other parties in a horribly negative manner. (App. I) This is unconstitutional.

The Settlement contains numerous provisions including: 1) that Armstrong et al. are enjoined from pursuing any claim or defense; 2) that Steppes can refile Steppes nondischargeability complaint against Armstrong forever regardless of the time limits in F.B.R.P. 4007 (App. D § 11); and 3) that the Modified Judgment remains effective. (App. I ¶¶9, 10, 12, & 13)

A bankruptcy plan or order approving a settlement cannot create rights inconsistent with the law or the Code. This Settlement does just that. A nondischargeability complaint must be filed in a timely manner. F.B.R.P. 4007 A settlement cannot circumvent this rule. The Settlement allows Steppes to refile a nondischargeability complaint forever regardless of F.R.B.P. 4007. (App. D § 11) The Settlement protects

Steppes in all ways AND yet allows Steppes to continue to pursue the Modified Judgment including against Armstrong. Steppes did not "settle" anything. Steppes gave up nothing, retained everything they wanted and obtained an injunction preventing the Trusts and Armstrong from even defending themselves. Armstrong has never located any case where a party is denied the right to defend themselves. The issues between Steppes and the Trusts have nothing to do with MPV. The issues between Steppes and Armstrong have nothing to do with MPV. The Code does not provide authority or jurisdiction for the Bankruptcy court to enjoin issues and/or parties that have nothing to do with the bankruptcy estate. Steppes could not have obtained this relief through litigation and the Code. The Code does not allow Bankruptcy courts to approve settlements that provide parties relief outside the Code.

This is not a settlement but an illegal use of the bankruptcy court to destroy Armstrong and the Trusts while denying Armstrong and the Trusts the constitutional right to access to the courts. *U.S.C.A. Const. Amend. I*

The related issues here are: 1) Does a bankruptcy court have authority under 11 U.S.C. § 105 to enjoin non-debtors despite 11 U.S.C. § 524's ("524") specific limitations on injunctions? 2) Can a bankruptcy court enter permanent injunctions in a liquidation case and/or once the estate conducts no more business?

Section 524 specifically provides that only actions against a debtor can be enjoined. 11 U.S.C. § 524(e) Section 105(a) provides broad powers to bankruptcy courts to enter orders. As a general rule, the equitable powers of § 105(a) cannot be used by court to authorize more extensive relief than a specific provision of the Code. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) There is a serious dispute

between the circuits. The Second, Third, Fourth, Sixth and Seventh Circuits support broad-based injunctions. *Corning 1*; *In re Continental Airlines*, 203 F.3d 203 (3rd Cir. 2000); *In re Specialty Equipment Co. Inc.*, 3 F.3d 1043 (7th Cir. 1993); *In re Drexel Burnham Lambert Group Inc.*, 960 F.2d 285 (2nd Cir. 1992); *In re A.H. Robins Co. Inc.*, 880 F.2d 694 (4th Cir. 1989) The Ninth and Tenth Circuits hold that § 105(a) does not override § 524(e). *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995) *(petition denied* 517 U.S. 1243 (1996)); *In re Zale Corp.*, 62 F.3d 746 (5th Cir. 1995); *In re Western Real Estate Fund Inc.*, 922 F.2d 592 (10th Cir. 1990)

In this case, the Tenth Circuit ignored its own rulings in avoiding the merits. This is significant in that, once again, courts will go to any length to avoid Armstrong's claims and rights.

In this situation, the injunction is against the debtor Armstrong and other parties that are not parties in interest, have never been noticed and where the bankruptcy court has no jurisdiction. "Notice, after all, is the cornerstone underpinning bankruptcy procedure." *In re Savage Industries, Inc.*, 43 F.3d 714, 720 (1st Cir.1994); *In re Hexcel Corp.*, 239 B.R. 564, 567 (N.D.Cal.1999). Segal never noticed the Trusts or the Beneficiaries of the Trusts and yet the courts have held the Trusts and the Beneficiaries bound by the Settlement. This is clearly unconstitutional. *Mullane, Lee* and *Manzo* (App. G) Clearly, Segal knew how to notice the Trusts and the Beneficiaries yet Segal chose not to. This Court already held that beneficiaries that are known must be noticed. *Mullane* The lower courts all ignored *Mullane* and entered injunctions against parties that were never noticed. (App. C at 12a, 14a-17a) Additionally, the Injunction specifically benefits a long list of parties that have no interest in the MPV estate or have ever contributed to the MPV estate. In fact, most of the

parties protected by the Injunction caused the MPV bankruptcy and now want the bankruptcy court to protect them for what they have done. This is clearly not the purpose of §§ 105 or 524.

The Sixth Circuit established tests to evaluate whether injunctions are appropriate stating they are only appropriate in "unusual circumstances". *Corning 1* at 658 There is no room to provide a detailed analysis of these tests here. Suffice it to say that the protected parties did not contribute anything to the MPV reorganization; there was no MPV reorganization; the parties enjoined were not parties, not noticed and were not aligned with the debtor or creditors; the Injunction has nothing to do with the MPV reorganization; the Injunction has no effect on the creditors or the debtor; and Armstrong was denied the right to be paid for all of Armstrong's claims.

Under §§ 105(a) and or 524, the bankruptcy court has no jurisdiction to enter injunctions that protect parties completely unrelated to the case or to enjoin non-parties that have no claim against the estate. Armstrong suggests that this issue is so basic and fundamental that it warrants this Court's consideration. Armstrong cannot find many cases where courts enforced settlements against non-parties where there was no jurisdiction or notice. *Mullane* It is up to this Court to address this issue and confirm the exact limits of bankruptcy court jurisdiction, especially in relation to injunctions and especially when there is no relation to the bankruptcy case, on non-party rights affected by settlements in which they did not participate or consent—including in a bankruptcy proceeding.

There is a significant division between the circuits relating to whether the general statute § 105(a) takes precedence over the specific statute § 524(e). The general rule is that a specific statute supersedes a general

statute. *Western* at 601 Section 524(e) is very specific that non-debtors cannot be released. Congress amended Section 524 in 1994 adding subsection g providing for one specific example where a bankruptcy court does have authority to release non-debtors. This specific amendment illustrates that Congress did not create any other exceptions to Section 524(e). Bankruptcy courts are using Section 105(a) to override other clear sections of the Code. Based on this reasoning, bankruptcy courts can use Section 105(a) to do whatever they want regardless of the Code. Essentially, as in this situation, bankruptcy courts are now ignoring the Code to do whatever they want. There is no basis in the Code to enter a permanent injunction that extends after the estate is closed to enjoin a debtor and protect non-parties. In all the cases where circuit courts have allowed injunctions it was to protect parties directly related to and liable for, the debtor and that contributed financially to the reorganization. In this situation the parties released in the Plan have no relationship to the debtor, did nothing to contribute to the Plan and, in fact, caused the MPV bankruptcy by filing lis pendens that Judge Clark called a pre-judgment writ of attachment without the protections of due process. (App. G) The real purpose of the Injunction is to protect Steppes and related parties from claims for filing the wrongful liens and wrongful bankruptcy claims based on unconstitutionally excessive penalties. (App. E)

Why is a bankruptcy court protecting creditors that caused the bankruptcy to be filed by filing wrongful liens against the debtor? Why is a bankruptcy court enjoining the debtor and other non-parties without notice and due process in violation of the Bankruptcy Code. 11 U.S.C. § 524(e)? Why is a bankruptcy court protecting this creditor when there is no relationship to the estate or any possibility of any valid unsecured creditor being paid

one penny? It is necessary for this Court to answer these questions and tell the courts that bankruptcy courts do not have jurisdiction or authority to enjoin debtors and non parties and release nondebtors and creditors using Section 105(a) to ignore the Bankruptcy Code entirely for the benefit of creditors that cause bankruptcies.

It is time for this Court to address these issues and resolve these differences between the circuits. Clearly there is a major dispute between some courts using Section 105(a) to completely ignore Congress' intent in Section 524(e).

3. Are Interlocutory Orders In Dismissed Cases Based On F.R.C.P. 41(A) Entitled To Preclusive Effect?

Various interlocutory orders were entered in the Fraudulent Transfer Case that Steppes voluntarily dismissed based on F.R.C.P. 41(a)(1) and Steppes dismissed other cases raising the same claims. Steppes' voluntary dismissal was "with prejudice" against Steppes and in Armstrong's favor. In Steppes' Memorandum in Support of Motion to Clarify and/or Reconsider Order Modifying Plan of Reorganization, Background ¶5, Steppes states: "Subsequent to the entry of the Litigation Injunction, the parties took action to substantially consummate the Plan of Reorganization, including the disbursement of money and the dismissal of several lawsuits *with prejudice*." *Cooter & Gell v. Hartmarx Corp.*, 110 S.Ct. 2447, 2455 (1990) Steppes, Segal and the Bankruptcy Court rely on some of the interlocutory orders for preclusive effect against Armstrong. This Court has never addressed the preclusive effect of interlocutory orders in favor of one party that voluntarily dismisses a case with prejudice.

The general rule relating to the preclusive effect of prior orders in a dismissed case is that the prior orders

have no preclusive effect. *Effect of Nonsuit, Dismissal, or Discontinuance of Action on Previous Orders*, 11 A.L.R.2d 1407, § 3, 6 (citing numerous cases for this proposition) *Winchester Homes, Inc. v. Osmose Wood Preserving, Inc.*, 37 F.3d 1053, 1058 (C.A.4,1994)

The interlocutory orders were never appealable denying Armstrong the right to review of those orders. Armstrong asserts that Steppes gave up any benefit from the interlocutory orders by voluntarily dismissing the case. This issue presents two important issues: 1) whether interlocutory orders are entitled to preclusive effect when a case is dismissed; and 2) whether any order is entitled to preclusive effect if the losing party does not have the opportunity to appeal the order for any reason. Armstrong submits that to give preclusive effect to an interlocutory order without the ability to appeal is an unconstitutional deprivation of a party's right to appeal and be heard. It is critical that this Court answer these questions.

4. **CAN PENALTIES OF OVER $2.8M IN RELATION TO ZERO ACTUAL DAMAGES AGAINST NON-DEBTORS PROVIDE STANDING TO AN ALLEGED CREDITOR AND ARE THESE PENALTIES UNCONSTITUTIONALLY EXCESSIVE? CAN ANY EXEMPLARY DAMAGES BE AWARDED WITHOUT AN AWARD OF ACTUAL DAMAGES?**

All of this litigation is based on Steppes' pursuit of the over $2.8M in statutory and common law forfeitures and penalties in the Modified Judgment where Steppes was awarded zero actual damages. (App. E) No court has ever reviewed the unconstitutionality of these forfeitures and penalties especially based on a *de novo* review. *Cooper* Steppes' claim in MPV was allegedly based on collecting these unconstitutional forfeitures and

penalties. Through the MPV plan Steppes was able to obtain a settlement that allowed Steppes to continue to pursue these unconstitutionally excessive penalties against Armstrong and the Trusts while Armstrong and the Trusts were enjoined from presenting their claims or even defending themselves. (App. I, C & H) Armstrong was not a party to the Texas Litigation and did not waive any right to present these defenses. *Armstrong v. Steppes Apartments, Ltd.* 57 S.W.3d 37, 40 Fn. 1 (Tex.App.-Fort Worth,2001)

This Court has addressed the unconstitutionality of punitive damages several times. *BMW* and *State Farm* This Court upheld the *BMW* tests in *State Farm* and ruled courts cannot punish parties for out of state conduct or being "unsavory characters". *State Farm* at 1523 This Court addressed the unconstitutionality of excessive penalties based on the Eighth Amendment in *Bajakajian.* This Court has not specifically applied *BMW*, *State Farm, Cooper* and *Bajakajian* to statutory or common law civil penalties and forfeitures. Forfeitures have been addressed such as in *Bajakajian.* These cases all support an application of these principles to statutory or common law civil penalties. There is certainly no reason that these principles should not apply to statutory or common law civil penalties and forfeitures.

Armstrong will present a comprehensive analysis of the tests and reasons supporting Armstrong's contentions in the brief if the Court grants the petition. This Court well knows the *BMW* tests: the degree of reprehensibility; the disparity between the harm or potential harm compared to the penalties; and the difference between the penalties and the civil penalties authorized or imposed in comparable cases. *BMW* at 1598

Here the Trusts' actions were to comply with a court order by providing a settlement offer and

spreadsheets with the court's promise of immunity and threat of incarceration. These actions are not reprehensible. This test fails. The ratio of penalties to actual damages is infinite ($2.8M to zero) and incomparable. Many states, including Texas, now specifically hold that no exemplary damages can be awarded without an award of actual damages. Tex. Civ. Prac. & Rem. Code § 41.004(a) (App. D § 11) Steppes never claimed actual damages much less were awarded actual damages. This test fails. Usury is a misdemeanor in Texas warranting up to a $1,000.00 penalty. Tex. Fin. Code. Ann. § 305.001 (App. D § 12) There are two Trusts so the maximum penalty was $2,000.00 compared to over $2.8M in penalties. This test fails. All three *BMW* tests fail.

Numerous lower courts have evaluated penalties in relation to net worth. This Court has not specifically addressed forfeitures and penalties in relation to a defendant's net worth. In this case, the $2.8M in penalties is over double the entire net worth of the Charitable Trust and at least 40% of the alleged net worth of the Family Trust. There is evidence in the records of these amounts and the Trusts and Armstrong never had any opportunity to challenge the penalties. The first time the amounts of the excessive penalties were presented was in the judgment entered after the August 1996 trial. The amount of the penalties was not requested or presented at the trial. Punishment or penalties are meant to punish not destroy. *Browning-Ferris Industries of Vermont, Inc. v. Kelco*, 109 S.Ct. 2909, 2926 (1989) These penalties destroyed the Trusts and Armstrong. Steppes' goal was to destroy the Trusts and Armstrong so they could not defend themselves or respond and Steppes has been completely successful. *E.E.O.C. v. HBE Corp.* 135 F.3d 543, 557 (C.A.8 1998) (Penalties of 5% of net worth excessive); *Sierra Club*

Foundation v. Graham, 85 Cal.Rptr.2d 726, 743 (Cal.App. 1 Dist.,1999) (noting general 10% of net worth limit); and (more cases will be presented in any brief).

Forfeitures and penalties are to be reviewed *de novo*. *Cooper* at 1685 and *Bajakajian* at 2037 Statutory and common law civil penalties must be reviewed *de novo*. There has NEVER been a *de novo* review of these penalties. Armstrong is entitled to this *de novo* review. It is critical that this Court grant this petition and review these penalties *de novo* and vacate the penalties as they relate to the MPV estate, the Trusts and Armstrong.

These issues remain relevant and ripe because these penalties are penal in nature; not entitled to full faith and credit and still affect Armstrong today. *State Farm* at 1522 (referring to *Huntington v. Attrill*, 146 U.S. 657, 669 (1892) ("Laws have no force of themselves beyond the jurisdiction of the State which enacts them, and can have extra-territorial effect only by the comity of other States")) The Settlement specifically provides that the penalties remain effective against the Trusts and Armstrong despite the Settlement and Armstrong's bankruptcy discharge. (App. I)

If this Court believes *BMW* and *State Farm* already apply to civil penalties then this is another example of courts ignoring this Court's precedent as the Utah Supreme Court did in *State Farm* (petition pending).

It is critical that this Court grant this petition to apply the *BMW* and *State Farm* tests to civil penalties and confirm that penal judgments are not entitled to full faith and credit. *State Farm* at 1522 It is critical that this Court grant this petition to insure that civil penalties are reviewed *de novo*. It is critical that this Court grant this petition to, once again, tell the courts of this country that they cannot punish parties with unconstitutionally excessive penalties of any kind. It is critical that this

Court grant this petition to enter a decision that no penalties can be awarded in the absence of an award of actual damages. None of this mass of litigation ever would have occurred had this rule been honored—especially since Steppes never claimed any actual damages.

The *Huntington v. Attrill, 146 U.S. 657, 664 (1892)("Attrill")* case is over 100 years old. The *Attrill* case is often quoted as stating that penalties *in the international sense* are not entitled to full faith and credit. Numerous courts have used this distinction of "in the international sense" to not apply *Attrill* to obvious penalties. The interpretation and application of *in the international sense* has created confusion. It is critical that this Court clarify *in the international sense* or merely clarify that penal judgments are not entitled to full faith and credit. Steppes argued continually that the Texas usury statutes were not penalties that the "executive of the state" could pardon. *Attrill* at 667-669 There are almost no penalties in this day and age that can specifically be pardoned by the head of a state. This particular phrase, *in the international sense,* is used to complicate the question of whether a judgment is penal or not.

This Court has addressed the concept of penal repeatedly but not specifically in relation to full faith and credit. There are numerous definitions of penal. Surely the $2.8M in Texas usury penalties is punishment and in fact, the Texas Supreme Court has labeled them penal. *Steves Sash & Door Co. v. Ceco Corp.*, 751 S.W.2d 473 (Tex. 1988) ("The penalty in usury cases given to the "usuree" is a boon or a windfall which he is allowed to receive as a punishment to the usurious lender, not as interest for the use of the borrower's money.") Yes, despite this declaration by the Texas courts, Steppes argues that the penalties in the Modified Judgment are

entitled to full faith and credit because they are not penal *in the international sense* and cannot be pardoned. This additional language in *Attrill* continues to confuse this issue. *Testa v. Katt*, 67 S.Ct. 810, 812 (1947) (considering federal penalties v. state penalties) It is only this Court that can answer this question. Armstrong submits that it is critical that this Court update the penal exception to full faith and credit to eliminate the terms *in the international sense* and *that can be pardoned.* Penalties are either penal or they aren't. The $2.8M in penalties is clearly penal as confirmed by the Texas Supreme Court.

This Court is very familiar with the *BMW* and *State Farm* concepts. Armstrong merely refers the Court to the Court's own extensive opinions on these matters. This situation is the perfect opportunity to address the *BMW* tests in relation to excessive civil penalties and forfeitures where over $2.8M in penalties and forfeitures were assessed in relation to zero actual damages created through the judicial process and court ordered settlement documents with the court's promise of immunity. To punish any party for complying with court orders with the promise of immunity and threat of incarceration is ludicrous but to punish a charitable trust is abominable.

Here are three very important issues this Court should address in this case: 1) that *BMW* applies to civil penalties other than punitive damages; 2) that no penalties can be awarded without an award of actual damages (there is no purpose in punishing anyone and taking the precious time of the legal system when there are no damages); and 3) to update and clarify the definition of penal judgments that are not entitled to full faith and credit.

5. CAN A BANKRUPTCY PLAN OF REORGANIZATION BE APPROVED BASED ON PAYING ALL UNSECURED CREDITORS WHEN

ONE UNSECURED CREDITOR HAS NOT BEEN PAID AND THAT CREDITOR WAS DENIED THE RIGHT TO A HEARING?

The Bankruptcy Code provides that a plan of reorganization must pay all unsecured creditors in full at least as much as the creditor would have received under a chapter 7 liquidation. 11 U.S.C. § 1129(a)(7)(A)(ii) and (b) (App. D § 13) Segal allegedly paid all unsecured creditors in full and had remaining funds. Segal did not pay Armstrong for the Transwest Credit Union Claim of $7,319.05.

The Transwest Claim was an automobile loan secured by a 1993 Suzuki. The claim consisted of a secured claim to the extent of the value of the 1993 Suzuki. The deficiency caused by the 1993 Suzuki being valued less than the $7,319.05 is an unsecured claim. The Bankruptcy Court ordered Segal to surrender the 1993 Suzuki to Armstrong. Segal filed an objection to Armstrong's claim as an unsecured claim on March 7, 2002. No order shortening time was granted. Segal scheduled a hearing on Segal's objection to claim for March 11, 2002 only four calendar days, (including a weekend) after March 7th. Judge Clark held that an objection to claim required 30 days notice citing F.B.R.P. 3007. (App. D § 14) No hearing was held on Segal's objection. Judge Clark ruled that Segal was to resolve the Transwest Claim by surrendering the 1993 Suzuki and allowing Armstrong to have an unsecured claim. Segal paid all other unsecured claims in full. These facts are undisputed. The issue is the application of the law to these facts in that the Bankruptcy Court approved the MPV Plan in violation of 11 U.S.C. § 1129(a)(7)(A)(ii) and (b) (App. D §13).

Armstrong voted against approval of the MPV Plan and Segal did not pay the Transwest Claim. The Plan could not be approved according to the bankruptcy

code. Segal did not pay Armstrong for the unsecured portion of the Transwest Claim. This issue continues despite the Tenth Circuit's finding that the MPV Plan was consummated even though the Transwest Claim was never paid. *In re Beyond.com Corp.*, 289 B.R. 138, 146 (Bkrtcy.N.D.Cal.,2003)

The Bankruptcy Code is clear that ALL creditors must either approve the plan or be paid in full. 11 U.S.C. § 1129(a)(7)(A)(ii) and (b) (App. D §13) That simply did not occur here. Judge Clark and Segal ignored the Bankruptcy Code to Armstrong's detriment. A plan of reorganization cannot be confirmed unless the plan fully complies with all provisions of 11 U.S.C. § 1129. The MPV Plan did not comply with 11 U.S.C. § 1129(a)(7)(A)(ii). There are no findings in the lower courts regarding whether Armstrong received the appropriate value for the Transwest Claim. However, the facts are clear that Armstrong did not receive any distribution for the unsecured portion of the Transwest Claim and all other unsecured creditors were paid in full. The MPV Plan must be reversed for not complying with Section 1129. *Tripp v. Prock*, 865 F.2d 265, 3 (Table) (C.A.9 1988)

The Bankruptcy Code is also clear that any plan must fully comply with 11 U.S.C. § 1129. There can be no dispute that the MPV Plan does not fully comply with § 1129. The real issue here is whether bankruptcy judges can take it upon themselves to ignore the Code and rule whatever they want, especially against a particular pro se party. The law is the law and it applies to everyone. Courts cannot rule against anyone because they are "unsavory" or any other reason. *State Farm* at 1523

While it may seem insignificant to this Court that Segal did not pay one unsecured claim to Armstrong, this is still a clear violation of the Code that Judge Clark and the Tenth Circuit ignored. These same courts do

everything possible to find anyway to rule against Armstrong including ignore, jurisdiction the Bankruptcy Code, notice, due process and this Court's decisions.

CONCLUSION

The law is to apply equally to everyone including allegedly unsavory pro se parties. *State Farm* at 1523 This Court has consistently upheld the rights of all types of parties including prisoners, rapists, murderers, terrorists and criminals. This Court must uphold the rights of pro se parties, such as Armstrong, as well. If this Court will protect all parties **except** normal citizens such as pro se Armstrong, then the Constitution is failing. These issues certainly merit this Court's attention to insure, once again, that all parties are entitled to the law and all that it provides. *Mullane, Peralta, State Farm, BMW, Manzo* etc.

The real issue, in all these questions, is how the lower courts ignored clear law and this Court's decisions to find ways to rule against Armstrong and enjoin Armstrong and others without jurisdiction, authority or notice. This is a repeating theme throughout all these proceedings. Entering the Injunction protecting Steppes and friends from Armstrong, the Trusts and the Beneficiaries is a blatant violation of the Code where the Court had no jurisdiction. It is critical that this Court address these issues and clarify the law. This issue involves due process, notice, absence of jurisdiction, violations of the Bankruptcy Code and other violations. If the MPV Plan is fully consummated, the Injunction is not related to MPV. The Injunction is merely for Steppes benefit when Steppes should not have even filed a claim in the MPV case.

It is a denial of Armstrong's constitutional right to access to the courts to claim that a permanent injunction is moot and not review Armstrong's issues. A permanent injunction is never moot by definition. It is

critical that this Court reverse the Tenth Circuit and order that Armstrong's issues be addressed by judges that will actually consider Armstrong's issues and claims. The Tenth Circuit will not; regardless of what this Court rules.

It is time that this Court addressed bankruptcy court authority and jurisdiction in relation to permanent injunctions, who they can affect, who they can protect and for how long they can stay in effect. The Injunction here has nothing to do with MPV and if the MPV case is fully consummated, there is no purpose for the Injunction. The circuits disagree on this issue.

There is an open question apparently as to the effect of interlocutory orders in dismissed cases. The Utah courts have found ways to apply preclusion principles against Armstrong from interlocutory orders in cases that were dismissed with prejudice in Armstrong's favor. There can't be rulings against Armstrong in cases that were dismissed with prejudice in Armstrong's favor. By definition, a dismissal with prejudice against a plaintiff is a "loss" against the plaintiff on all of the plaintiff's claims and cannot be rulings against the defendant at the same time. This issue requires this Court's attention.

It is critical that this Court apply the *BMW, State Farm, Cooper* and *Bajakajian* principles to statutory forfeitures and civil penalties and for the Court to hold that there simply cannot be any exemplary damages or punishment when the defendant caused no harm. This is relevant here because the Injunction and the Plan revolve around Steppes while Steppes is not entitled to any relief or consideration since the $2.8M in penalties are unconstitutionally excessive. Without the $2.8M in penalties, Steppes has no standing. None of this horror of litigation ever would have occurred if courts had followed these principles—as this Court has continually

commanded. Even in *State Farm*, the Utah Supreme Court ignored this Court's directions requiring further litigation in that case. (Petition pending)

Settlements cannot be used to circumvent the law even in bankruptcy. Plans of reorganization are essentially massive settlements. Segal, Steppes, Rushton and Judge Clark used the MPV Plan and the Settlement to circumvent the law and the Code including without due process and notice. Settlements cannot be used to create jurisdiction or to avoid the duty to notice all interested parties. This Settlement was an agreement by the parties on one side of a dispute to destroy and enjoin the other side without the other side's participation or notice. F.B.R.P. 3007 cannot be avoided through settlements. Non parties cannot be enjoined through settlements. One side of an adversarial proceeding cannot "win" through a fabricated settlement avoiding due process and the protections of full legal proceedings, including discovery. A bankruptcy court cannot use a settlement to expand jurisdiction and authority. It is critical that this Court provide direction as to bankruptcy court jurisdiction and that settlements and plans cannot be used to ignore the Code etc.

It is also critical that this Court confirm that bankruptcy courts cannot approve plans of reorganization that do not comply with Section 1129. There is no question that Segal did not pay all unsecured creditors; and therefore, Segal did not fully comply with Section 1129. 11 U.S.C. § 1129(a)(7)(A)(ii) The MPV Plan was approved despite this. Alleged consummation of the MPV Plan cannot correct the simple fact that the MPV Plan was approved in violation of the Code and must be vacated. Segal, Steppes and Rushton cannot benefit by allegedly consummating a plan that is in violation of the Code. Again, it is critical that this Court address this issue and uphold the law. The alternative is merely to

give bankruptcy courts unlimited authority and jurisdiction to ignore the law.

All parties are entitled to notice, due process, discovery and a full and fair opportunity to be heard regardless of their religion, age, sex, political associations, representing themselves in court, race, status, personal relationships etc. It is not so much the attorneys that abuse the legal system; it is the judges that allow them to abuse the legal system[2]. It is up to this Court to send a message to the courts all over the United States that the law is to be applied equally and that every person, regardless of any reason or class, including self-representation, is entitled to due process to its fullest extent including the constitutional right to access to the courts. It is clear discrimination for the courts to deny parties representing themselves the right to access to the courts.

Allowing this horror to continue unabated is a message to U.S. citizens that judges, legislators and attorneys are entirely above the law and, in fact, there

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[2] Here is an example of how laws are applied unequally: Steppes and Feece argue that Armstrong is precluded from defending himself against Steppes and Feece using the Texas Modified Judgment against Armstrong, individually, even though Armstrong was not a party, and was never named, in the Texas Litigation. Steppes and Feece judicially admitted that Armstrong wasn't liable on the Texas Modified Judgment. At the same time, Steppes and Feece relitigate all the issues they did and could have litigated against the Trusts and Armstrong, relentlessly year after year, including the issues Steppes and Feece lost in the Texas Litigation. Steppes and Feece's position is apparently that preclusion principles only apply to prevent Armstrong, a non-party, from defending himself; that the part of the Texas Modified Judgment that specifically excludes Armstrong, individually, has no effect; and that Steppes and Feece can continue to relitigate the same claims and issues forever. However, all the Defendants and other courts allow Steppes and Feece to maintain these positions.

really is no law for the average U.S. citizen especially representing themselves.

Even pro se parties are entitled to constitutional access to the courts without additional infringements and burdens. This Court has continually upheld due process rights and matters. It is necessary for this Court to once again apply the constitution strictly for all people. *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 2648 (U.S.,2004) (referring to numerous other Supreme Court decisions)

The Petition for Writ of Certiorari should be granted.

Respectfully submitted.

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